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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,920	09/23/2003	Kris Oprisko	20019.03	6544
7590	09/20/2004		EXAMINER	
The Law Office of Steven G. Roeder 5560 Chelsea Avenue La Jolla, CA 92037			MENDIRATTA, VISHU K	
			ART UNIT	PAPER NUMBER
			3712	
DATE MAILED: 09/20/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/670,920	OPRISKO, KRIS
	<b>Examiner</b>	<b>Art Unit</b>
	Vishu K Mendiratta	3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 23 September 2003.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-43 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-43 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) Paper No(s)/Mail Date. \_\_\_\_.  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/23/03. 5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-16 rejected under 35 U.S.C. 102(b) as being anticipated by

Teunenbrock (6739935).

Teunenbrock teaches providing a plurality of game pieces and a playing board (4:31-34) including a first game piece (1) and a second game piece (2) having deformable keys (10.10'). Playing boards inherently have playing positions for placing pieces as well known in the art area of board games.

Applicant may note that rules regarding moving pieces do not further limit an apparatus in the claim.

3. Claims 17,19 rejected under 35 U.S.C. 102(b) as being anticipated by Hennig (4947527).

Hennig teaches a method of playing by moving a first game piece (32) and a second playing piece (34) on a surface (Fig.7) as indicated by wheels, both being deformable game pieces as seen from mating arrangement (6). Applicant may note that limitations such as “a playing surface”, “a playing position” and “deformable game pieces” are

given broadest reasonable interpretations (3:58-62). For that matter any surface has plurality of positions that can be used for moving objects.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-16 rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Teunenbrock.  
Teunenbrock teaches all limitations except that it does not expressly teach playing positions. In the art area of board games it is well known that for the purpose of moving playing pieces, game boards are divided into playing positions. In order to move playing pieces on Teunenbrock board, it would have been obvious to modify the board to provide playing positions. One of ordinary skill in art at the time the invention was made would have suggested using a playing board with positions.

Applicant may note that rules regarding moving pieces do not further limit an apparatus in the claim.

6. Claim 17-31,32-43 rejected under 35 U.S.C. 103(a) as being unpatentable over Coventional chess game in view of Teunenbrock.

Conventional chess teaches all limitations such as moving playing pieces, confronting upon landing on occupied positions, King pieces, arranging playing pieces, defeating the opponent's king piece and removing playing pieces from the game.

Conventional chess does not teach using deformable playing pieces.

Teunenbrock teaches using deformable playing pieces in a game board situation (4:31-35). Teunenbrock teaches moving two deformable pieces to bring close to each other and in that deforms game pieces as can be seen from Fig.1-2. While doing so Teunenbrock also teaches providing a game board (4:31-35). This clearly suggests that the contest is possible in a game board environment and moving on the game board surface from one area to another area. One of ordinary skill in art at the time the invention was made would have used the contest in a board game environment.

Teunenbrock suggests that the game pieces are used in competitions. In order to have competitions it would have been obvious to have players going against each other. One of ordinary skill in art at the time the invention was made would have suggested a competition between players.

Teunenbrock teaches rotating a game piece to break off (1:30-32).

Each game piece providing break-off keys (Fig.1-2).

In order to make the game interesting and attractive to players it would have been obvious to use deformable playing pieces to simulate a real war situation. One of ordinary skill in art at the time the invention was made would have suggested using deformable playing pieces to simulate a real war situation.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. 6659463,5035666,204/0051244A1.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vishu K Mendiratta whose telephone number is (703) 306-5695. The examiner can normally be reached on Mon-Fri 8AM to 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris H Banks can be reached on (703) 308-1745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Vishu K Mendiratta  
Primary Examiner  
Art Unit 3712

  
VKM  
September 16, 2004